



# Protection of Freedoms Act 2012

## 2012 CHAPTER 9

### PART 1

#### REGULATION OF BIOMETRIC DATA

### CHAPTER 1

#### DESTRUCTION, RETENTION AND USE OF FINGERPRINTS ETC.

#### *Destruction rules for samples and impressions of footwear subject to PACE*

#### 14 Destruction of samples

After section 63Q of the Police and Criminal Evidence Act 1984 (for which see section 13) insert—

#### **“63R Destruction of samples**

- (1) This section applies to samples—
  - (a) taken from a person under any power conferred by this Part of this Act, or
  - (b) taken by the police, with the consent of the person from whom they were taken, in connection with the investigation of an offence by the police.
- (2) Samples to which this section applies must be destroyed if it appears to the responsible chief officer of police that—
  - (a) the taking of the samples was unlawful, or
  - (b) the samples were taken from a person in connection with that person’s arrest and the arrest was unlawful or based on mistaken identity.
- (3) Subject to this, the rule in subsection (4) or (as the case may be) (5) applies.

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*Status: This is the original version (as it was originally enacted).*

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- (4) A DNA sample to which this section applies must be destroyed—
  - (a) as soon as a DNA profile has been derived from the sample, or
  - (b) if sooner, before the end of the period of 6 months beginning with the date on which the sample was taken.
- (5) Any other sample to which this section applies must be destroyed before the end of the period of 6 months beginning with the date on which it was taken.
- (6) The responsible chief officer of police may apply to a District Judge (Magistrates' Courts) for an order to retain a sample to which this section applies beyond the date on which the sample would otherwise be required to be destroyed by virtue of subsection (4) or (5) if—
  - (a) the sample was taken from a person in connection with the investigation of a qualifying offence, and
  - (b) the responsible chief officer of police considers that the condition in subsection (7) is met.
- (7) The condition is that, having regard to the nature and complexity of other material that is evidence in relation to the offence, the sample is likely to be needed in any proceedings for the offence for the purposes of—
  - (a) disclosure to, or use by, a defendant, or
  - (b) responding to any challenge by a defendant in respect of the admissibility of material that is evidence on which the prosecution proposes to rely.
- (8) An application under subsection (6) must be made before the date on which the sample would otherwise be required to be destroyed by virtue of subsection (4) or (5).
- (9) If, on an application made by the responsible chief officer of police under subsection (6), the District Judge (Magistrates' Courts) is satisfied that the condition in subsection (7) is met, the District Judge may make an order under this subsection which—
  - (a) allows the sample to be retained for a period of 12 months beginning with the date on which the sample would otherwise be required to be destroyed by virtue of subsection (4) or (5), and
  - (b) may be renewed (on one or more occasions) for a further period of not more than 12 months from the end of the period when the order would otherwise cease to have effect.
- (10) An application for an order under subsection (9) (other than an application for renewal)—
  - (a) may be made without notice of the application having been given to the person from whom the sample was taken, and
  - (b) may be heard and determined in private in the absence of that person.
- (11) A sample retained by virtue of an order under subsection (9) must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.
- (12) A sample that ceases to be retained by virtue of an order under subsection (9) must be destroyed.

- (13) Nothing in this section prevents a speculative search, in relation to samples to which this section applies, from being carried out within such time as may reasonably be required for the search if the responsible chief officer of police considers the search to be desirable.”